

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Pecos and Wink, Texas)

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) MM Docket No. 97-235
) RM-9187
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NOTICE OF PROPOSED RULE MAKING

Adopted: November 19, 1997

Released: December 5, 1997

Comment Date: January 26, 1998

Reply Comment Date: February 10, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ronald W. Latimer ("petitioner"), permittee of Station KKLY(FM), Channel 247C1, Pecos, Texas, requesting the reallocation of Channel 247C1 from Pecos to Wink, Texas, and the modification of Station KKLY(FM)'s construction permit to specify Wink as its community of license. Petitioner states he will apply for Channel 247C1 at Wink, if allotted.

2. Petitioner seeks modification of Station KKLY(FM)'s authorization pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expression of interest.¹ In support of his proposal, petitioner states that the reallocation of Channel 247C1 from Pecos will not deprive the community of its only broadcast service since Stations KIUM(AM) and KPTX(FM) already serve Pecos. Petitioner states the city of Wink was established in 1928 and is governed by a mayor and a board of aldermen. The city has many basic services including a police department, a water department, tax assessors and a U.S. post office. He contends that

¹ See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

the new allotment will result in a net service benefit for the affected communities and will advance the Commission's allotment priorities by providing Wink with its first local aural transmission service.

3. We believe petitioner's proposal warrants consideration since it could provide Wink² with its first aural transmission service. We recognize that Station KKLY(FM) remains unbuilt, however, since petitioner proposes to relocate Station KKLY(FM)'s transmitter site, there will be potential gain and loss areas. Therefore, petitioner is requested to provide information regarding any potential gain and loss areas, and also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 247C1 can be allotted to Wink in compliance with the Commission's minimum separation requirements with a site restriction of 36.7 kilometers (22.8 miles) southeast to accommodate petitioner's desired site.³ Since Wink is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 247C1 at Wink.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Pecos, Texas	247C1 ⁴ , 252A	252A
Wink, Texas	--	247C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is

² According to the 1990 U.S. Census, Wink is an incorporated community with a population of 1,189 persons.

³ The coordinates for Channel 247C1 at Wink are 31-28-16 NL and 102-57-28 WL.

⁴ We note that the FM Table of Allotments credits Pecos, Texas, with the allotment of Channel 247C. However, the allotment of Channel 247C was downgraded from a Class C to a Class C1 pursuant to the grant of petitioner's construction permit (BPH-950621MB).

required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before January 26, 1998, and reply comments on or before February 10, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Barry A. Friedman
Thompson, Hine & Flory LLP
1920 North Street, NW
Suite 800
Washington, DC 20036
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.